

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

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4 SUMMARY ORDER

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6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL
7 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS
8 OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS
9 OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A
10 RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL
11 OR RES JUDICATA.
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13 At a stated term of the United States Court of Appeals for the Second Circuit, held at the United
14 States Courthouse, Foley Square, in the City of New York, on the 29th day of March, two
15 thousand and six.
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17 PRESENT:

18 HON. PIERRE N. LEVAL,
19 HON. BARRINGTON D. PARKER,

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21 *Circuit Judges,*

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23 HON. WILLIAM K. SESSIONS III,*
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25 *Chief District Judge.*
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28 Fatmir Lumaj and Violina,
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SUMMARY ORDER
No. 03-40523-ag

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31 *Petitioners,*

32
33 v.
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35 Alberto R. Gonzales,** Attorney General,
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39 *Respondent.*

* The Honorable William K. Sessions III, Chief United States District Court Judge for the District of Vermont, sitting by designation.

** Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft.

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3 For Petitioner:

Parker Waggaman, Law Offices of Parker
Waggaman, P.C., New York, NY.

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6 For Respondent:

Brian Hayes, Carole J. Ryczek, James P. Fleissner,
Assistant United States Attorneys, *for*
Patrick J. Fitzgerald, United States Attorney,
Northern District of Illinois, Chicago, IL.

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12 UPON DUE CONSIDERATION of this petition for review of the Board of Immigration
13 Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the
14 petition for review is DENIED.

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16 Fatmir Lumaj, through counsel, petitions for review of the BIA’s order affirming the
17 decision of an immigration judge (“IJ”) that denied Lumaj’s claims for asylum, withholding of
18 removal, and relief under Article 3 of the Convention Against Torture (“CAT”). Lumaj alleges
19 he was persecuted in Albania because of his religion, political opinion, and particular social
20 group. The IJ found Lumaj was not credible and, therefore, did not demonstrate eligibility for the
21 relief he sought. We assume the parties’ familiarity with the underlying facts and procedural
22 history.

23 This Court reviews the agency’s factual findings, including adverse credibility
24 determinations, under the substantial evidence standard. *See* 8 U.S.C. § 1252(b)(4)(B); *Jin Hui*
25 *Gao v. United States Att’y Gen.*, 400 F.3d 963, 964 (2d Cir. 2005); *Zhou Yun Zhang v. INS*, 386
26 F.3d 66, 73 (2d Cir. 2004); *Ramsameachire v. Ashcroft*, 357 F.3d 169, 177 (2d Cir. 2004);
27 *Secaida-Rosales v. INS*, 331 F.3d 297, 306-07 (2d Cir. 2003); *Diallo v. INS*, 232 F.3d 279, 287
28 (2d Cir. 2000).

29 Lumaj’s asylum application was denied based on the one-year filing deadline imposed by
30 8 U.S.C. § 1158(a)(2)(B), and he does not argue to this Court that the IJ erred in this regard. *See*
31 *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 542 n.1 (2d Cir. 2005) (citing *Norton v. Sam’s Club*,

1 145 F.3d 114, 117) (2d Cir. 1998)). Further, we cannot review the IJ's adverse credibility finding
2 as it relates to asylum or withholding of removal, because Lumaj did not raise with the BIA the
3 claim that the IJ's credibility finding was erroneous, and thus failed to satisfy, with respect to this
4 claim, the statutory exhaustion requirement. *See* 8 U.S.C. § 1252(d)(1); *see also Xiao Ji Chen v.*
5 *U.S. Dep't of Justice*, 434 F.3d 144, 149 n.1 (2d Cir. 2006) (stating that where a petitioner has
6 not raised an argument before the BIA, the reviewing court normally may not consider it since
7 the “petitioner has failed to exhaust her administrative remedies”); *Gill v. INS*, 420 F.3d 82, 86
8 (2d Cir. 2005). Finally, Lumaj did not challenge the IJ's denial of CAT relief before the BIA.

9 For the foregoing reasons, the petition for review is DENIED. Having completed our
10 review, any stay of removal that the Court previously granted in this petition is VACATED, and
11 any pending motion for a stay of removal in this petition is DENIED as moot.

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14 FOR THE COURT:

15 Roseann B. MacKechnie, Clerk

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17 By: _____
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